

Bill No. 45-01
Concerning: Storm Water Management -
Requirements
Revised: 3-6-02 Draft No. 3
Introduced: December 11, 2001
Enacted: March 12, 2002
Executive: March 21, 2002
Effective: June 20, 2002
Sunset Date: None
Ch. 3, Laws of Mont. Co. 2002

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Council President at the request of the County Executive

AN ACT to:

- (1) bring the County's stormwater management law into compliance with state stormwater management requirements for local jurisdictions; and
- (2) generally amend County laws regarding stormwater management.

By amending

Montgomery County Code
Chapter 19, Sediment Control and Storm Water Management
Sections 19-20 through 19-34

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

Sec. 1. Sections 19-20 to 19-34 are amended as follows:

ARTICLE II. [STORM WATER] STORMWATER MANAGEMENT.

19-20. Purpose of article; scope.

[(a) It is the policy of the County to:

- (1) protect and promote the public health, safety and general welfare through the management of storm water,
- (2) protect public and private property from damage,
- (3) reduce the effects of development on land and stream channel erosion,
- (4) assist in the attainment and maintenance of water quality standards, and
- (5) preserve and enhance the environmental quality of stream valleys.

(b) The Maryland Storm Water Management Act, under the Environment Article, Section 4-201 et seq., of the Maryland Code, provides that a local government must not issue a grading or building permit for a property unless the local government has approved a storm water management plan. This Article does not infringe on the authority given to the District by state law.

(c) The Departments of Environmental Protection and Permitting Services are responsible for coordinating and enforcing this Article.

(d) This Article does not apply to construction of a single-family residence and any accessory building on a lot of 2 or more acres.]

The purpose of this Article is to protect, maintain and enhance the public health, safety, and general welfare by establishing minimum requirements and procedures to control the adverse impacts associated with

increased **stormwater** runoff from developed and developing lands. The policy of the County is to minimize damage to public and private property, reduce the effects of **development** on stream water quality, control stream channel **erosion**, reduce local flooding, and, to the extent reasonable, maintain the **pre-development** runoff characteristics of land after **development** through proper **management** of **stormwater** runoff.

19-21. Definitions.

In this Article, the following words and phrases have the following meanings unless the context indicates otherwise:

Administration: The Water Management Administration of the Maryland Department of the Environment.

Applicant: A landowner, contract purchaser or other **person** that assumes the legal responsibility for developing land subject to this Article.

Associated nonresidential property: [[a]] A nonresidential property from which [storm water] **stormwater** drains into a [storm water] **stormwater management facility** that primarily serves one or more **residential properties**.

Best management practice: A structural device or nonstructural practice designed to temporarily store or treat **stormwater** runoff to mitigate flooding, reduce pollution, recharge groundwater, and provide other amenities.

Board: The [[Montgomery]] County Planning Board [[of the Maryland-National Capital Park and Planning Commission]].

Channel protection storage volume: The volume used to design structural **management** practices to control stream channel **erosion**.

Commission: The Maryland-National Capital Park and Planning Commission.

Department: The [[Montgomery County]] Department of [Environmental Protection] **Permitting Services**.

Design Manual: The applicable Maryland Stormwater Design Manual which serves as the official guide for **stormwater management** principles, methods, and practices in Maryland.

Development: A project that consists of subdividing land or adding buildings and other improvements to individual parcels of land.

Director: The Director of the Department of [Environmental Protection] Permitting Services or the Director's designee.

Director of [Permitting Services] Environmental Protection: The Director of the Department of [Permitting Services] Environmental Protection, or the designee of the Director of [Permitting Services] Environmental Protection.

District: The Montgomery Soil Conservation District.

Drainage area: That area, which is enclosed by a ridge line, that contributes runoff to a single point, measured in a horizontal plane.

Erosion: The process by which the ground surface is worn away by the action of wind, [or] water, ice, or gravity.

Executive: The County Executive or the County Executive's designee.

Extreme flood volume: The storage volume required to control the infrequent but large storm events during which overbank flows reach or exceed the boundaries of the 100-year floodplain.

Functional master plan: A master plan for conserving and managing a watershed [[approved by the **District Council** and adopted by the **Commission**]].

Off-site [storm water] stormwater management: The design and construction of a facility to control [storm water] **stormwater** runoff from more than one **development**. An off-site [storm water] **stormwater management facility** may be located in a development and would be on-site with respect to that development, but the facility is off-site with respect to all other **developments** that the facility serves.

On-site [storm water] stormwater management: The design and construction of a facility to control all [storm water] stormwater runoff in a development.

Person: An individual, corporation, firm, partnership, joint venture, agency, organization, municipal corporation, County or state agency, or any combination of them.

Preliminary plan: A preliminary plan of subdivision, approved under Chapter 50.

Recharge volume: That portion of the water quality volume used to maintain groundwater recharge rates at a development site.

Redevelopment: Any construction, alteration, or improvement which:

(a) exceeds 5,000 square feet of land disturbance; and

(b) is performed on a **site** where the existing land use is commercial, industrial, institutional, or multifamily residential.

Residential property: A property that contains a detached dwelling unit, one or more townhouses, duplexes or other attached dwelling units, or a multi-family dwelling.

Sediment: Soils or other surficial materials transported or deposited by the action of wind, water, ice, or gravity as a product of **erosion**.

Site: Any tract, lot, or parcel of land, or combination of tracts, lots, or parcels of land, which are under one ownership, or are contiguous and under diverse ownership, where **development** is performed as part of a unit, subdivision, or project.

[Storm water] Stormwater: That precipitation which travels over natural, altered, or impervious surfaces to the nearest stream, channel, conduit, or impoundment and appears in surface waters. **[Storm water] Stormwater** also includes snow melt.

[Storm water] **Stormwater management**: The collection, conveyance, storage, treatment, and control of [storm water] **stormwater** runoff as needed to [prevent] reduce accelerated channel **erosion**, increased flood damages, or [reduced] water [quality] pollution.

[Storm water] **Stormwater management facility**: An infiltration device, vegetative filter, structure, channel, pipe, weir, orifice, or combination of those measures, designed and constructed to control [storm water] **stormwater** runoff [[in a way that prevents]] to reduce accelerated stream channel **erosion** and [[the]] pollution of surface waters.

[Storm water] **Stormwater management plan**: A set of representations, drawings or other documents, including **development** phasing statements, [submitted by an applicant and containing] which contains all of the information and specifications [as required by] that the Department [of Permitting Services under regulations adopted under this Article pertaining to] requires an applicant to submit in order to obtain a [storm water] **stormwater management approval**.

Structural maintenance: The inspection, construction, reconstruction, modification, or repair of any part of a [storm water] **stormwater management facility** undertaken to assure that the facility remains in the proper working condition to serve its intended purpose and prevent structural failure. **Structural maintenance** does not include landscaping, grass cutting, or trash removal.

Watershed: The total drainage area contributing runoff to a single point.

Watershed management plan: A plan to satisfy the regulatory requirements of the County's National Pollutant Discharge Elimination System permit issued by the Maryland Department of the Environment under the federal Clean Water Act.

Water quality volume: The volume needed to capture and treat 90 percent of the average annual runoff volume at a development site.

19-22. Watershed plans.

[Under Article 28 of the Maryland Code, the County Planning Board must prepare functional master plans for conserving and managing each watershed in the County for the County Council's review and approval. Each functional master plan must contain, among other things, recommendations for potential locations of off-site storm water management and flood control facilities, and indicate the storage capacity required for each segment of the watershed contained in the plan. These plans must serve as a guide for public policies to protect the watersheds and for selecting and scheduling specific facilities for inclusion in the capital improvements program.]

(a) The Department of Environmental Protection, in cooperation with the Department, the Board, and other appropriate agencies, may develop watershed management plans to implement stormwater management policies that apply individually to specific watersheds in the County. Each watershed management plan should:

- (1) include detailed hydrologic and hydraulic analyses to determine hydrograph timing;
- (2) evaluate stormwater quantity and quality, and base flow and groundwater management needs;
- (3) include a cumulative impact assessment of watershed development;
- (4) identify existing flooding, receiving stream channel, water quality, biological resources, and habitat conditions;
- (5) specify the types of quantitative stormwater management, stream restoration and wetlands protection practices to be implemented;
- (6) identify specific opportunities for stormwater retrofit, [[and]] stream and wetlands restoration, and groundwater recharge;

(7) specify where the **Department** may grant waivers of **on-site stormwater management** controls;

(8) be consistent with the **Design Manual's** General Performance Standards for **Stormwater Management** in Maryland; and

(9) be approved by the **Administration**.

(b) The **Board** should prepare **functional master plans** under Article 28 of the Maryland Code to preserve, conserve, and manage natural resources in each of the County's **watersheds** for the County Council's review and approval. Each **functional master plan** should address land use, impervious impact on streams and waterways, stream buffers, wildlife and stream habitat, forest preservation, and other issues related to the permitting of **stormwater management facilities** and the development of **watershed management plans**.

[19-23. Storm water management chapter.

The Executive must submit a storm water management chapter to the Council, to be included as an integral part of the 10-year water supply/sewerage systems plan that the Council adopts. The storm water management chapter must:

(a) be guided by the adopted functional master plans, if any, for watershed conservation and management;

(b) outline County policies and objectives for developing off-site storm water management and flood control facilities during the ensuing 10 years;

(c) identify potential sites for off-site storm water management facilities and flood control facilities needed during and after the ensuing 6-year capital improvements program period;

(d) address the problems of non-point-source contamination of streams and rivers arising inside and outside the suburban sanitary district; and

- (e) recommend policies toward attaining national, state, regional, and County water quality standards or objectives.]

19-23. Stormwater management plans.

- (a) *Concept plan.* Before the **Board** may approve a **preliminary plan** of subdivision, an **applicant** must submit a **stormwater management concept plan** to the **Department** for review and approval. If a **preliminary plan** of subdivision or site plan is not required, the **applicant** must submit a **stormwater management concept plan** to the **Department** for review and approval before submitting an application for a **sediment** control permit. Each concept plan is subject to the following conditions and requirements:

- (1) The plan must indicate how the **stormwater management** criteria will be applied to each proposed **development** or **redevelopment** project. The Department may require a plan to analyze the downstream effects of any proposed **development** or **redevelopment** project. The **applicant** may include structural and nonstructural **stormwater management** measures in the plan. The design criteria and methodologies used in developing the plan must be consistent with criteria specified in the **Design Manual** and any other criteria established by regulation.
- (2) Any **stormwater management plan** must be consistent with any **watershed management plan** that the Department of Environmental Protection has approved or any flood **management plan** that the Maryland Department of the Environment has approved involving the **site** of the proposed **development** or **redevelopment** project.

(3) The **Department** must refer the concept plan back to the **Board** for comment before approving the plan if the **Board** so requests.

(4) The **Department** may require incrementally more specific submittals at each stage of the approval process for a project which requires **site** plan or development plan review.

(b) *Design plan.* Any **person** required under this Chapter to obtain a **sediment** control permit must include a **stormwater management** design plan as part of the permit application. The design plan must conform to the **stormwater management** concept plan and serve as the basis for all later construction. All construction specifications must adhere to the requirements in the **Design Manual** and any applicable regulation.

(c) *Plan preparation.* The **Director** may require the **stormwater management** concept and design plans to be prepared by a professional engineer, professional land surveyor, landscape architect licensed in Maryland, or any other individual whose qualifications are acceptable to the **Department**. If a **stormwater best management practice** requires either a dam safety permit from the Maryland Department of the Environment or a small pond approval from the **District**, the **Director** must require the design plan to be prepared by a professional engineer licensed by the State of Maryland.

[19-24. Off-site storm water management facilities.

The Executive must annually recommend the design and construction of off-site storm water management facilities as projects in the capital improvements program. Those recommendations must be guided by the adopted functional master plans, if any, the adopted 10-year water supply and sewerage systems plan, and the general policies of this Article. The Executive must recommend a construction

schedule for capital improvements program projects to provide adequate protection of the watersheds from the increases in storm water in the basins where contributing development occurs.]

19-24. On-site requirements; County participation; waivers.

(a) On-site stormwater management. A **person** that receives a building permit or a **sediment** control permit must provide **on-site stormwater management** unless the **Director** waives this requirement.

(b) County participation. If the **[[Department]] Director of Environmental Protection** finds that additional storage capacity in an **on-site** facility would correct an existing problem or provide sufficient capacity for future **development** or **redevelopment** projects, the **[[Department]] County** may participate financially in the construction of a **stormwater management facility**. The amount of participation must be determined by the extent to which the facility exceeds **on-site stormwater management** requirements.

(c) Waiver.

(1) An **applicant** seeking a waiver of any **on-site stormwater management** requirement must submit a request to the **Department** in writing in a form acceptable to the **Director**. The **applicant** must submit a separate written request for each later addition, extension, or modification to a **development** that has received a waiver.

(2) The **Director** may grant a waiver if the **applicant** shows that existing **[[circumstances]] physical conditions** prevent full compliance with any **on-site stormwater management** requirement.

- (3) If a **site** is an infill **development** or **redevelopment site**, the **Director** may waive channel protection requirements if:
- (A) the planned **development** or **redevelopment** project will not increase the impervious surface area on the **site**; or
- (B) runoff from the **site** will drain through an adequately-sized existing improved storm drain system before discharging into a natural stream channel without adversely affecting the receiving channel, and the discharge to the storm drain system will not increase **erosion** in the receiving waters.
- (4) The **Director** may also waive channel protection requirements if:
- (A) an off-**site** facility was designed and constructed to provide the necessary runoff controls for the **site**; and
- (B) the facility's design assures non-erosive conveyance of runoff from the **site** to the facility.
- (5) The **Director** may grant a waiver only if:
- (A) the **applicant** satisfies criteria established by regulation; and
- (B) the waiver is consistent with an applicable **watershed management plan** approved by the Department of Environmental Protection.
- (6) The **[[Department]] Director** may grant each waiver only on a case-by-case basis. The **[[Department]] Director** must consider the cumulative effects of all waivers granted in a **drainage area** or **watershed**.
- (7) When a waiver is granted, the **[[Department]] Director** must require the **applicant** to:
- (A) provide a monetary contribution;

- (B) grant an easement or dedicate land for the County to
construct a **stormwater management facility**; or
 (C) take specific stream or wetland restoration measures.

[19-25. Storm water management required for all development.

The Board must not approve an application for preliminary plan of subdivision unless the application includes a statement and drawing describing, in concept, how erosion, sediment, water quality impacts, and storm water resulting from the development will be controlled or managed. This concept plan, which must be approved by the Department of Permitting Services, must indicate whether storm water will be managed on-site or off-site and, if on-site, the general location and type of management. The Department of Permitting Services must not issue a building, grading, or sediment control permit for any parcel or lot created before or after the effective date of this Article unless the Director of Permitting Services has approved a plan for on-site storm water management or a waiver of the on-site storm water management requirement for the plat or parcel.]

19-25. Contributions, dedications, and stream restoration.

- (a) Contributions. Each monetary contribution required under Section 19-24 must comply with a fee schedule set by Executive regulation. The County must credit each contribution to a capital improvement program project for planning and implementation of **stormwater management** and stream or wetland restoration.
- (b) Dedications. The County may agree with an **applicant** to accept an easement or dedicate land to build a **stormwater management facility**. If the **Department** consents in writing for a facility to be located on parkland, the **Board** ~~[[may]]~~ must also agree ~~[[with]]~~ before the **applicant** ~~[[to]]~~ may dedicate land to build a **stormwater management facility**.

(c) Stream and wetlands restoration measures. The **Department** may allow an **applicant** to construct stream or wetland restoration measures instead of on-site stormwater management controls if:

- (1) the Director of Permitting Services and the **Director of Environmental Protection** both find that it is in the County's best interest for the **applicant** to provide stream or wetland restoration measures; and
- (2) the estimated cost of the stream or wetland restoration measures do not exceed the estimated cost of on-site stormwater management controls that the **applicant** would otherwise be required to construct.

[19-26. On-site requirements; waivers.

A person that applies for a building permit must provide for on-site storm water management unless the Director of Permitting Services waives this requirement after receiving a written request from the applicant. If a waiver is granted, the Department of Permitting Services must require the applicant to provide:

- (a) monetary contributions,
- (b) drainage or conveyance improvements, or
- (c) the grant of an easement or a dedication of land for the County to construct a storm water management facility.]

19-26. Stormwater management design criteria.

- (a) Each applicant must use recharge volume, water quality volume, and channel protection storage volume sizing criteria to design a stormwater management facility for new development as required by the Design Manual and any applicable regulation. Each applicant must also use water quality volume and channel protection storage criteria for any redevelopment project. If the Department finds that

historical flooding problems exist at the site of a new development or redevelopment project, the Director may require the use of overbank flood protection volume and extreme flood volume criteria.

(b) The Director may reduce the minimum control requirements if the applicant incorporates nonstructural stormwater management measures into the site design plans in accordance with the Design Manual and any applicable regulation.

(c) The applicant may use alternative structural and nonstructural practices to satisfy water quality volume requirements if the Director finds that those practices satisfy the criteria in the Design Manual and any additional criteria established by regulation. The Department must approve any alternative practice used for either a new development or redevelopment project. The Administration must also approve any alternative practice used for a new development project.

[19-27. Contributions.

(a) Monetary amount. When an applicant obtains a waiver of the required on-site storm water management, the monetary contribution required must be made under a fee schedule established as part of the regulations adopted by the Executive under Section 19-31. The fee schedule must be based on the cubic feet of storage required for on-site management of the development in question under the soil conservation service formula unless the developer and the County agree on a greater alternate contribution. The County must credit all of the monetary contributions to the appropriate capital improvements program project. The monetary contribution must not exceed the cost of the otherwise required on-site storm water management facility. The applicant must make the

monetary contribution to the County before the County issues a building permit for the development.

- (b) Dedication of land. Instead of the applicant making a monetary contribution to the County when the applicant obtains a waiver of the requirement to provide for on-site storm water management under Section 19-26, the applicant may agree with the Department of Permitting Services or the Board, if the Department of Permitting Services consents in writing for the site to be added to parkland, to dedicate land for construction of a storm water management facility. The applicant must sign the agreement with the Department of Permitting Services or the Board before recording the plats. If no recorded plat is required, then the applicant must enter into the agreement with the Department of Permitting Services or the Board before the Department of Permitting Services issues the building permit. Whenever an applicant signs an agreement with the Board, the applicant must provide a certified copy to the Department of Permitting Services.]

19-27. Financial security.

(a) Required.

- (1) Before issuing a building permit for a **development** which requires a **stormwater management facility**, the **Director** must require the **applicant** or owner to furnish a performance or cash bond, irrevocable letter of credit, certificate of guarantee, or other instrument from a financial institution or issuing **person** satisfactory to the **Director** and the County Attorney, for construction of the **on-site stormwater management facility** in an amount equal to the estimated cost of the construction.

(2) As used in this Article, a certificate of guarantee is an instrument issued by an organization approved by the **Director** that satisfies the capitalization criteria and other reasonable criteria established by regulation. The certificate of guarantee must only be issued by the approved organization on behalf of the organization's members in good standing. Only the **Director** may resolve questions concerning an **applicant's** eligibility to post a certificate of guarantee.

(3) The bond, letter of credit, certificate of guarantee, or other instrument must be conditioned on the faithful performance of the terms and conditions of an approved **stormwater management plan** and construction of the facility as provided in that plan and under this Article. The bond, letter of credit, certificate of guarantee, or other instrument must inure to the benefit of the County if the **applicant** or owner does not comply with the conditions of the bond, letter of credit, certificate of guarantee, or other instrument.

(b) Release.

(1) The **Director** must not release a bond, letter of credit, certificate of guarantee, or other instrument until the **Department**, after a final inspection, has found that the **stormwater management facility** complies with the approved plan and this Article.

(2) The **Department** may agree with an **applicant** regarding the stages of the work to be done on the facility. After completing each stage, the **applicant** must notify the **Department** that the **applicant** is ready for an inspection and, after the **Director** certifies that the **applicant** has completed that stage of work

under the approved plan and this Article, the Director may reduce the bond, letter of credit, certificate of guarantee, or other instrument pro rata, or may direct the Director of Finance to refund to the **applicant** a prorated share of the amount that the **applicant** deposited with the County.

(c) *Revocation of permit.* The Director must immediately revoke a building permit if the permittee does not maintain the bond, letter of credit, certificate of guarantee, or other instrument. If the Director finds that an organization issuing certificates of guarantee has violated an applicable law or regulation, the Director may immediately revoke any permit held by that organization's members to which a certificate of guarantee applies.

[19-28. County participation in on-site facilities.

When the Department of Permitting Services determines that additional storage capacity beyond that required of the applicant for on-site storm water management is needed to correct an existing problem or to provide protection in a more desirable fashion for future development, the Department may acquire, by purchase or dedication, additional land from the applicant or owner as necessary, or the Department may participate financially in the construction of a storm water management facility to the extent that the facility exceeds the required on-site storm water management.]

19-28. Inspection and maintenance of stormwater management facilities.

(a) *Installation inspections.*

(1) The Department, or an individual approved by the Department, must inspect each **stormwater management facility** under construction as needed to certify the facility's compliance with approved plans. The [[Department]] inspector must conduct

each inspection as provided in a checklist that the **Department** has approved for each type of **stormwater management facility**.

The inspector must prepare a written inspection report that includes the following information:

- (A) the date and location of the inspection;
- (B) whether construction complied with the approved **stormwater management plan**;
- (C) any variation from approved construction specifications; and
- (D) any violations of law or regulations that the inspector observes.

(2) The **Department** must notify the **applicant** in writing if the inspector observes any violations of this Article during the inspection. The written notice must describe the nature of the violation and prescribe any corrective action needed.

(3) Construction work on a **stormwater management facility** must not proceed until the **Department**:

- (A) inspects and approves the work previously completed; and
- (B) furnishes the inspection reports to the **applicant** after each inspection.

(b) *Inspection and maintenance of off-site facilities.* The Department of Environmental Protection must inspect and approve each **off-site stormwater management facility** for acceptance for County maintenance. After a facility is accepted, the Department of Environmental Protection must inspect each underground facility at least once each year and each above-ground facility at least once every

3 years, and must maintain each accepted facility in good working condition.

(c) *Inspection and maintenance of new on-site facilities.*

(1) Before issuing a building permit to develop any property that requires an **on-site stormwater management facility**, the **Department** must require the property owner to execute an easement and an inspection and maintenance agreement that is binding on all later owners of the land.

(2) The easement and agreement must give the County a perpetual right of access to the facility at all times, to inspect, operate, monitor, install, construct, reconstruct, modify, maintain, or repair any part of the **stormwater management facility** within the easement as needed to assure that the facility remains in proper working condition under approved design and environmental standards. The agreement must require the owner to be responsible for all nonstructural maintenance of the facility if the development consists of **residential property** or **associated nonresidential property**. Otherwise, the agreement must require the owner to be responsible for all maintenance of the facility, including **structural maintenance**.

(3) The owner must record the easement and agreement in the County land records and deliver a certified copy of each recorded document to the Departments of Permitting Services and Environmental Protection before the **Department** may issue a completion certificate.

(4) After the **Department** issues a completion certificate for construction of a new **stormwater management facility**, the

County must perform all **structural maintenance** on the facility if the facility serves **residential property** or **associated nonresidential property**. No other **person** may perform **structural maintenance** on a **stormwater management facility** that the County is required to structurally maintain without the County's written consent.

- (5) The Department of Environmental Protection must inspect each County-maintained underground facility at least once every year and each County-maintained above-ground facility at least once every 3 years.

(d) *Inspection and maintenance of existing on-site facilities.*

- (1) The owner of an **on-site stormwater management facility** that is not subject to subsection (c) must perform all **structural maintenance** needed to keep the facility in proper working condition. The owner of a **residential property** or **associated nonresidential property**, or a homeowners' association which includes the **residential property**, may execute a **stormwater management** easement granting the County a perpetual right of access to inspect, operate, monitor, install, construct, reconstruct, modify, maintain, or repair any part of the **stormwater management facility** within the easement as needed to assure that the facility remains in proper working condition under approved design standards.

- (2) If the owner of a **stormwater management facility** grants a **stormwater management** easement to the County, the owner must make any structural repairs needed to place the facility in

proper working condition, as determined by the Department of Environmental Protection, before the County enters into an agreement with the owner that obligates the County to assume responsibility for **structural maintenance** of the facility. After the owner and the County have agreed that the County will assume responsibility for **structural maintenance** of the facility, the owner must record in the County land records the easement and any other agreements executed in conjunction with the easement that are binding on later owners of the land [[in the County land records]]. The owner must deliver a certified copy of each recorded document to the Department of Environmental Protection.

(3) After the Department of Environmental Protection receives a certified copy of the easement and agreements, the County must structurally maintain and inspect the facility as provided in subsection (c).

(e) *Abandonment instead of repair.* The Department of Environmental Protection must inspect each **stormwater management facility** to see what repairs, if any, are needed to restore the facility to proper working condition. If the **Director of Environmental Protection** finds that the **stormwater management facility** is no longer needed to control **stormwater** runoff or that the benefits of a repaired **stormwater management facility** are not justified by the cost of repair, the owner of the **stormwater management facility** must abandon the use of the facility for **stormwater** functions as the **Director of Environmental Protection** orders. Any order issued under this subsection must not

restrict the facility from being used for recreational or other purposes not related to **stormwater** control.

(f) **Nonstructural maintenance of on-site facilities.** The owner of an **on-site stormwater management facility** must provide landscaping and perform any other nonstructural maintenance that impacts the effectiveness of routine **structural maintenance**, performed either privately or publicly. Among other actions, the owner must:

- (1) prevent the accumulation of solid waste on the property and the generalized growth of weeds or plants in violation of Section 58-3;
- (2) clear any woody vegetation, including trees and brush, within 25 feet of the facility's control structure and within 15 feet of an upstream or downstream dam embankment; and
- (3) abate any other condition on the property that the Department of Environmental Protection reasonably finds may adversely affect the facility's proper functioning.

(g) **Disposal of materials from maintenance.** A person that transports materials or debris resulting from the repair, cleaning, or maintenance of a **stormwater management facility** must dispose of the materials at a facility that has a valid permit to accept the type of materials or debris being deposited.

(h) **Emergency authority.** If, after inspection, the **Director of Environmental Protection** finds that the condition of a privately maintained **stormwater management facility** presents an immediate danger to the public health or safety because of an unsafe condition or improper maintenance, the **Director of Environmental Protection** may take needed actions to protect the public and make the facility safe,

including entering the property to make needed repairs. The County must assess any costs incurred as a result of the **Director of Environmental Protection's** actions against each owner of the facility. The County may collect the costs in the same manner as real property taxes are collected against the property where the facility is located. In addition, the County may seek reimbursement under any other method legally available to collect debts owed to the County.

[19-29. Inspection and maintenance of off-site storm water management facilities.

The Department must inspect and approve all off-site storm water management facilities for acceptance for County maintenance. After a facility is accepted, the Department must inspect each underground facility at least once each year and each above-ground facility at least once every 3 years. The Department must maintain each accepted facility in good working condition.]

19-29. Stormwater management loan program.

(a) The Department of Environmental Protection must create a **Stormwater Management Loan Program**. The Program must provide direct loans to eligible homeowners' associations and other **residential and associated nonresidential property** owners to:

(1) make structural repairs to restore a **stormwater management facility** to acceptable design standards before the owner petitions the County to assume responsibility for future **structural maintenance** of the facility under Section 19-28(d), or

(2) cover the cost of abandoning a facility under Section 19-28(e).

(b) The fund for the Program consists of:

(1) all funds appropriated to the Program;

(2) all payments on any loan from the Program;

(3) all interest earned on funds in the Program; and

(4) all funds received from any other public or private entity.

(c) The County **Executive** must adopt regulations under method (2) to administer the Program. These regulations should include:

(1) lending standards and priorities;

(2) terms and conditions of loans;

(3) application procedures;

(4) procedures for loan **applicants** to request reconsideration of a decision to deny a loan or a decision on interest rates, terms, and conditions; and

(5) collection procedures in cases of nonpayment or default.

[19-30. Inspection and maintenance of on-site storm water management facilities.

(a) Inspection and maintenance of new facilities.

(1) Before issuing a building permit to develop any property that requires an on-site storm water management facility, the Department of Permitting Services must require the property owner to execute an easement and an inspection and maintenance agreement that is binding on all later owners of land served by the on-site storm water management facility.

(2) The easement and agreement must give the County a perpetual right of access to the facility at all times, to inspect, operate, monitor, install, construct, reconstruct, modify, maintain, or repair any part of the storm water management facility within the easement as needed to assure that the facility remains in proper working condition under approved design and environmental standards. The agreement must require the owner to be

640 responsible for all nonstructural maintenance of the facility if the
641 development consists of residential property or associated
642 nonresidential property. Otherwise, the agreement must require
643 the owner to be responsible for all maintenance of the facility,
644 including structural maintenance.

645 (3) The owner must record the easement and agreement in the
646 County land records and deliver a certified copy of each recorded
647 document to the Departments of Permitting Services and
648 Environmental Protection.

649 (4) After the Department of Permitting Services issues a completion
650 certificate for the new storm water management facility under
651 Section 19-14, the County must perform all structural
652 maintenance on the facility if the facility serves residential
653 property or associated nonresidential property. No other person
654 may perform structural maintenance on a storm water
655 management facility that the County is required to structurally
656 maintain without the County's written consent.

657 (b) Maintenance of existing facilities.

658 (1) The owner of an on-site storm water management facility that is
659 not subject to subsection (a) must perform all structural
660 maintenance needed to keep the facility in proper working
661 condition. The owner of a residential property or associated
662 nonresidential property, or a homeowners' association which
663 includes the residential property, may execute a storm water
664 management easement granting the County a perpetual right of
665 access to inspect, operate, monitor, install, construct, reconstruct,
666 modify, maintain, or repair any part of the storm water

management facility within the easement as needed to assure that the facility remains in proper working condition.

(2) If the owner of a storm water management facility grants a storm water management easement to the County, the owner must make any structural repairs needed to place the facility in proper working condition, as determined by the Department, before the County enters into an agreement with the owner that obligates the County to assume responsibility for structural maintenance of the facility. After the owner and the County have agreed that the County will assume responsibility for structural maintenance of the facility, the owner must record the easement and any other agreements executed in conjunction with the easement that are binding on subsequent owners of land served by the facility in the County land records. The owner must deliver a certified copy of each recorded document to the Department of Environmental Protection.

(3) After the Department receives a certified copy of the easement and agreements, the County must structurally maintain the facility as provided in subsection (a).

(c) Abandonment instead of repair.

The Department must inspect each storm water management facility to see what repairs, if any, are needed to restore the facility to proper working condition. If after reviewing the existing drainage patterns, age, and design of a storm water management facility, the Director finds that it is more prudent to stop using the facility for storm water control functions rather than restore it to proper working condition, or finds that the facility is no longer needed to control storm water runoff because of

694 later land use changes, the owner must abandon the use of the facility
695 for storm water functions as the Director orders. Any order issued
696 under this subsection must not restrict the facility from being used for
697 recreational or other purposes not related to storm water control.

698 (d) Nonstructural maintenance.

699 The owner of an on-site storm water management facility must provide
700 landscaping and perform any other nonstructural maintenance that
701 impacts the effectiveness of routine structural maintenance, performed
702 either privately or publicly. Among other actions, the owner must:

- 703 (1) prevent the accumulation of solid waste on the property and the
704 generalized growth of weeds or plants in violation of Section 58-
705 3;
- 706 (2) clear any woody vegetation, including trees and brush, within 25
707 feet of the facility's control structure and within 15 feet of an
708 upstream or downstream dam embankment; and
- 709 (3) abate any other condition on the property that the Department
710 reasonably finds may adversely affect the facility's proper
711 functioning.

712 (e) Emergency authority.

713 If, after an inspection by the Department, the Director finds that the
714 condition of a privately maintained storm water management facility
715 presents an immediate danger to the public health or safety because of
716 an unsafe condition or improper maintenance, then the Director must
717 take needed actions to protect the public and make the facility safe,
718 including entering the property to make needed repairs. The County
719 must assess any costs incurred as a result of the Director's actions
720 against each owner of the facility. The assessment is a lien on the

property and may be collected in the same manner and subject to the same penalties as ordinary taxes.

- (f) Disposal of materials from maintenance. A person that transports materials or debris resulting from the repair, cleaning, or maintenance of a storm water management facility must dispose of the materials or debris at a facility that has a valid permit to accept the type of materials or debris being deposited.]

19-30. Regulations.

- (a) The **Executive** may adopt regulations under method (2) to implement this Article. Any regulation adopted under this Article must not conflict with or waive any provision of this Chapter, and must not be less restrictive than applicable requirements under state or federal law. The regulations must establish a fee schedule for monetary contributions to be paid to the County when the **Department** waives any **on-site stormwater management** requirement. The regulations may also include design standards and other criteria or procedures necessary to implement this Article.

- (b) The **Executive** may adopt plan review fees and inspection fees under method (3) to cover the cost of administering this Article.

19-31. Regulations.

The County Executive may adopt regulations under method (2) to implement this Article. Those regulations must establish a fee schedule for the monetary contributions to be paid to the County instead of constructing the required on-site storm water management facility. The regulations may also include design standards and other criteria or procedures necessary to implement this Article.]

19-31. Exemptions.

The following **development** activities are exempt from the **stormwater management** requirements under this Article:

- (a) agricultural land management activities;
- (b) any addition or modification to an existing single family detached residential structure if the addition or modification does not disturb more than 5,000 square feet of land area;
- (c) any **development** not associated with the construction of a new residential or commercial building if the **development** does not disturb more than 5,000 square feet of land area; and
- (d) any land **development** activity that the **Administration** finds is subject to any State law that regulates **stormwater management** runoff.

19-32. Transition for approved plans.

Each new **development** or **redevelopment** project must comply with this Article, except that:

- (a) A previously approved **stormwater management** concept plan remains valid if the **Department** issues a **sediment** control permit for the property covered by the plan [[within one year after the effective date of this Article]] before July 1, 2003. The **applicant** must construct the **stormwater management** system within 2 years after the **Department** issues the **sediment** control permit.
- (b) A residential lot containing 2 or more acres is exempt from any **on-site stormwater management** requirement if the **preliminary plan** creating the lot was approved before [[the effective date of this Article]] July 1, 2002 and the **Department** issues the **sediment** control permit [[within one year after the effective date of this Article]] before July 1, 2003.

[19-32. Performance bond.

(a) Procedures.

- (1) Before issuing a building permit to construct a development requiring a storm water management facility, the Director of Permitting Services must require from the applicant or owner a performance or cash bond, irrevocable letter of credit, certificate of guarantee, or other instrument from a financial institution or issuing person, in a form satisfactory to the Director of Permitting Services and the County Attorney, for the construction of the on-site storm water management facility in an amount equal to the estimated cost of that construction.
- (2) For purposes of this Article, a certificate of guarantee is an instrument issued by a person that is approved by the Director of Permitting Services and meets the capitalization and other reasonable criteria established by regulation. These criteria must include the demonstrated expertise of the issuing person or its members in storm water management and the incidence of noncompliance with this Chapter by all members of the issuing person. The certificate of guarantee must only be issued by the approved person on behalf of members in good standing of that person. Any question concerning the eligibility of an applicant to post a certificate of guarantee must be resolved by the Director of Permitting Services.
- (3) The bond, letter of credit, certificate of guarantee, or other instrument must be conditioned on the faithful performance of the terms and conditions of the approved storm water management plan and the construction of the facility as provided in that plan and this Article. The bond, letter of credit, certificate of

guarantee, or other instrument must inure to the benefit of the County and to any person aggrieved by the failure of the applicant or owner to comply with the conditions of that bond, letter of credit, certificate of guarantee, or other instrument.

(4) The Director of Permitting Services must not release the bond, letter of credit, certificate of guarantee, or other instrument until the Department of Permitting Services has made a final inspection and found that the storm water management facility complies with the approved plan and this Chapter.

(5) The Department of Permitting Services may also permit an applicant to enter into an agreement with the County and provide a bond, letter of credit, certificate of guarantee, or other instrument equal to the cost of the storm water management facility to the County. The agreement must specify the various stages of the work to be done on the facility. After completing each stage, the applicant must notify the Department that the applicant is ready for an inspection and, after the Director of Permitting Services certifies that the applicant has completed that stage under the approved plan and requirements of this Chapter, the Director of Permitting Services may reduce the bond, letter of credit, certificate of guarantee, or other instrument pro rata may direct the Director of Finance to refund to the applicant a prorated share of the amount deposited by the applicant with the County.

(b) The Director of Permitting Services must immediately revoke the building permit if the permittee does not maintain the bond or certificate of guarantee. Whenever the Director of Permitting Services finds that a person issuing certificates of guarantee has violated an applicable law or

regulation, the Director of Permitting Services may immediately revoke all permits of members of that person for which a certificate of guarantee has been posted. The Director of Permitting Services may also post stop work orders wherever applicable until the person substitutes an appropriate bond or other instrument acceptable to the County for the certificates of guarantee.]

19-33. Agreements between the County and municipalities.

- (a) The Executive must inform any incorporated municipality in the County that may regulate [storm water] **stormwater** management of any proposed [storm water] **stormwater management facility**, **development** or plan that could affect [storm water] **stormwater** management in the municipality. The Board must inform any municipality of any **functional master plan** or **preliminary plan** of subdivision hat may affect [storm water] **stormwater** management in the municipality.
- (b) The County and the Board may enter into cooperative agreements with any incorporated municipality in the County concerning any matter relating to [storm water] **stormwater** management, including the planning, design, construction, and maintenance of [storm water] **stormwater management facilities** and monetary contributions for [storm water] **stormwater** management. The County and the **Board** may enter into those cooperative agreements to coordinate [storm water] **stormwater management** activities with any municipality to avoid duplication of effort and to minimize the costs associated with an effective [storm water] **stormwater** management program.
- (c) If a municipality operates a [storm water] **stormwater** management program that serves substantially the entire municipality and meets all

applicable federal and state standards, the County must reimburse the municipality, subject to appropriation, for the cost of operating the program, limited to the amount the **Director of Environmental Protection** estimates the County would spend for that municipality if it were operating the program, by means of a cooperative agreement under subsection (b).

[19-34. Storm water management loan program.]

- (a) The Department must create a Storm Water Management Loan Program. The Program must provide direct loans to eligible homeowners' associations and other residential and associated nonresidential property owners to:
 - (1) make structural repairs to restore a storm water management facility to acceptable design standards before the owner petitions the County to assume responsibility for future structural maintenance of the facility under Section 19-30(b), or
 - (2) cover the cost of abandoning a facility under Section 19-30(c).
- (b) The fund for the Program consists of:
 - (1) all funds appropriated to it;
 - (2) all payments on any loan from the Program;
 - (3) all interest earned on funds in the Program; and
 - (4) all funds received from any other public or private entity.
- (c) The County Executive must adopt regulations under method (2) to administer the Program. These regulations should include:
 - (1) lending standards and priorities;
 - (2) terms and conditions of loans;
 - (3) application procedures;

- (4) procedures for loan applicants to request reconsideration of a decision to deny a loan or a decision on interest rates, terms, and conditions; and
- (5) collection procedures in cases of nonpayment or default.]

19-35. Water Quality Protection Charge.

* * *

- (b) The Charge must be imposed on each **residential property** and **associated nonresidential property**, as specified in regulations adopted by the Executive under Method (1) to administer this Section. The regulations may define different classes of real property, depending on the amount of impervious surface on the property, ~~[[storm water]]~~ stormwater runoff from the property, and other relevant characteristics, for purposes of applying the charge.

* * *

- (f) The Director must deposit funds raised by the Charge, and funds for this purpose from any other source, into a ~~[[storm water]]~~ stormwater management fund. The fund must only be appropriated for:
 - (1) construction, operation, and maintenance of ~~[[storm water]]~~ stormwater management facilities, and related expenses;
 - (2) enforcement and administration of this Article; and
 - (3) any other activity authorized by this Article or Maryland Code, Environment Art., §4-204.
- (g) This Charge does not apply to any property located in a municipality in the County which:
 - (1) operates a ~~[[storm water]]~~ stormwater management program that meets all applicable federal, state, and County requirements and has received any necessary federal or state permit; and

(2) imposes a similar charge or other means of funding its [[storm water]] stormwater management program in that municipality.

(h) A person that believes that the Director of Environmental Protection has mistakenly assigned a Charge to the person's property or computed the Charge incorrectly may apply to the Director of Environmental Protection in writing for a review of the Charge, and request an adjustment to correct any error, within 21 days after receiving a bill for the Charge. If the Director of Environmental Protection denies any requested adjustment, the applicant may request reconsideration of the Director's denial in writing within 10 days after the date of the denial. An aggrieved property owner may appeal the Director's final decision to the County Board of Appeals within 10 days after the Director issues the decision. The Board of Appeals may hear and decide all appeals taken from a final decision of the Director of Environmental Protection under this subsection as provided in Article I of Chapter 2A.

Sec. 2. Transition. Until superseded, a Regulation issued before this Act took effect remains in effect to the extent the regulation is consistent with Chapter 19, as amended by this Act. This Act does not apply to a violation of Chapter 19 that initially accrued before this Act took effect.

Approved:

/S/

March 14, 2002

Steven A. Silverman, President, County Council

Date

Approved:

/S/

March 21, 2002

Douglas M. Duncan, County Executive

Date

This is a correct copy of Council action.

/S/

March 25, 2002

Mary A. Edgar, CMC, Clerk of the Council

Date